

### REMARKS

Reconsideration of this application is respectfully requested. Applicant has addressed every ground for rejection in the Office Action dated December 15, 2004 and believes the application is now in condition for allowance.

Claims 1-12 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claim 1 has been amended to clarify that the material of the second portion has *a* grain and that the opening is in the first portion of the housing. Claim 12 has been amended to clarify that the clamshell package is displayed. Accordingly, it is respectfully submitted that this rejection is traversed and should be withdrawn.

Claims 1-4, 6, 13-14, 16 and 19-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Croce U.S. Patent No. 4,781,294. According to the Examiner, Croce teaches a clamshell package that provides resistance to tearing in multiple directions. However, contrary to the teaching of the present invention, the package in Croce is designed to permit or facilitate tearing of part of the package along the grains to gain access to the interior thereof. Therefore, the package in Croce does not provide resistance to tearing in multiple directions, but rather facilitates tearing of the package in a particular direction. For this reason, among others, it is respectfully submitted that the claims are patentably distinct over Croce, the present rejection is traversed and should be withdrawn, and the claims be allowed to issue.

Furthermore, the claims have been amended to clarify that the display chambers or blisters extend outwardly from the housing. As Croce does not teach or disclose a display chamber that extends outwardly from the housing, it is respectfully submitted that the claims directed to a clamshell package are patentably distinct over this reference and should be allowed.

Claims 17 and 19-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Lauterbach Jr. U.S. Patent No. 3,402,873. According to the Examiner, Lauterbach Jr. teaches a

first portion of substantially tear-resistant material and a second portion of substantially tear-resistant material having two substantially crossing grains. Contrary to the Examiner's statement, however, Lauterbach teaches a tray portion (20) that cooperates with a lid (30) to form a package. Accordingly, Lauterbach does not disclose or teach a housing having two portions (or panels) and a display chamber. Furthermore, it is respectfully submitted that Lauterbach Jr. does not teach panels having substantially crossing grains. Rather, the patent refers to the molecular orientation of the material, wherein the tray member is made from unoriented material [Col. 3, lines 19-22, Col. 4, lines 35-37]. According to the disclosure, due to the *unoriented* nature of the lid, the material has a tendency to relax or sag (i.e., change) when heated so that a pulling force may be applied by the tray member to the lid. Applicant claims no such effect from unoriented matters. For these reasons, it is respectfully submitted that the claims are patentable over these prior art references and should be allowed.

Claims 1-4, 6, 12-13, 16 and 19-20 stand rejected under 35 U.S.C. §103(a) as being obvious over Pirro et al. U.S. Patent No. 6,308,832 or Lind et al. U.S. Patent No. 6,050,415 in view of Croce. In order to establish a *prima facie* case of obviousness, the Examiner must establish that: a prior art reference or references teach or suggest all of the claimed limitations; there is some suggestion or motivation to modify the prior art to obtain the claimed invention; and there is a reasonable expectation of success. M.P.E.P. §706.02(j).

The obviousness analysis focuses on the differences or changes between the claimed subject matter of the application and the subject matter contained within the prior art references at the time of the invention. Regardless of the simplicity of the changes, the claimed subject matter will be patentable if the prior art fails to teach, suggest or motivate one of ordinary skill in

the art to modify what was known in the prior art, including any personal knowledge, to obtain the claimed subject matter. In particular, the Federal Circuit has stressed that

[i]n a proper obviousness determination, [w]hether the changes from the prior art are minor, . . . the changes must be evaluated in terms of the whole invention, including whether the prior art provides any teaching or suggestion to one of ordinary skill in the art to make the changes that would produce the patentee's device. This includes what could be characterized as simple changes . . . .

*In re Chu*, 36 U.S.P.Q.2d 1089, 1094 (Fed. Cir. 1995) (citations omitted).

As set forth above, the package in Croce is designed to permit or facilitate tearing of part of the package along the grains. Therefore, the package in Croce does not provide resistance to tearing in multiple directions, but rather facilitates tearing of the package in a particular direction. Accordingly, it is respectfully submitted that the prior art of record does not teach each of the limitations of the claims. Furthermore, because Croce is directed to a housing that may be easily torn, there is no motivation, teaching or suggestion to combine Croce with either Lind or Pirro to get a clamshell package, clamshell package housing or blister pack having first and second portions (or panels (Claims 19 and 20)) that have substantially crossing grains when assembled to resist tearing in multiple directions and to prevent access to the contents of the package or housing. In fact, by teaching a package that allows for part of one side of the package to be easily removed, it is submitted that Croce actually teaches away from a housing that utilizes two portions or panels that are attached together to provide resistance to tearing in multiple directions. In fact, even if Croce could be combined with either Lind or Pirro, if anything, the result would be an easy-open clamshell package or blister pack—exactly the opposite of Applicant's invention. For these reasons, among others, it is respectfully submitted that the claims are patentably distinct over the prior art references of record, the present rejection is traversed and should be withdrawn, and the claims be allowed to issue.

Claims 5-10 and 15 stand rejected under 35 U.S.C. §103(a) as being obvious over Pirro et al. and Croce in further view of Beguhn U.S. Patent No. 4,236,652. For the reasons set forth above concerning the Examiner's application of Croce, it is respectfully submitted that these claims are patentably distinct over the prior art of record and should be allowed. Furthermore, Beguhn is directed to a package that has film that possesses "a high degree of uniaxial orientation . . . so that the axis of orientation of the film extends substantially parallel to the score" to permit the package to be ripped open. Accordingly, it is respectfully submitted that one of ordinary skill in the art, when looking to create a package such as Applicant's that is tear-resistant, would not look to or be motivated to combine the teaching of a package that may be easily ripped open by hand.

Furthermore, contrary to the Examiner's statement, it is respectfully submitted that Beguhn does not teach the use of plastic coated paper board, and in fact does not teach or suggest use of a paper board material at all—it only discloses the use of a flexible paper sheet. In response to the Examiner's statement that SPS board is not seen as providing any new and non-obvious results, it is respectfully submitted that the result of using an SPS board and a coating is that, when cut open, the resulting cut surfaces will be substantially free of sharp edges. It is respectfully submitted that if it were obvious to use an SPS board coated with a polyethylene material as claimed in Claims 11, 15 and 18, others in the industry would have utilized such a construction. However, as the prior art does not teach this feature, it is respectfully submitted that the Examiner, in view of Applicant's claimed invention, has perhaps improperly resorted to hindsight in rejecting the claims. For these reasons, among others, it is respectfully submitted that the claims are patentably distinct over the prior art references of record, the present rejection is traversed and should be withdrawn, and the claims be allowed to issue.


Claims 11, 17 and 18 stand rejected under 35 U.S.C. §103(a) as being obvious over Pirro et al. and Croce in further view of Stoker Jr., U.S. Patent No. 3,695,417. For the reasons set forth above concerning the Examiner's application of Croce, it is respectfully submitted that these claims are patentably distinct over the prior art of record and should be allowed. Furthermore, contrary to the Examiner's statement, the indicia are printed on the backing of the package, and not on the display window, wherein the indicia may be seen through the window when the backing is folded over. Accordingly, it is respectfully submitted that Stoker Jr. does not teach a display chamber having graphics on its exterior as claimed in Claims 11 and 18. Accordingly, it is respectfully requested that the present rejection be withdrawn and the claims be allowed to issue.

Finally, to more clearly define the above-noted unique features of the present invention, new Claims 21 through 24 have been added. It is respectfully submitted that none of the prior art of record teaches or suggests the use of a first SPS board coated with a substantially tear-resistant material having a first grain aligned in a first direction and a second SPS board coated with a substantially tear-resistant material having a second grain aligned in a direction substantially contrary to the direction of the first grain so as to result in a substantially criss-cross pattern when the boards are placed together. Accordingly, it is respectfully submitted that the new claims are patentably distinct over the prior art of record and should be allowed.

Should the Examiner discover that there are remaining issues that could be resolved by an interview, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

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Respectfully submitted,

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